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PATENT
Attorney Docket No.: 023070-099910US
Client Ref. No.: 99-404-2

Assistant Commissioner for Patents
Washington, D.C. 20231

On September 9, 2002

TOWNSEND and TOWNSEND and CREW LLP

By: Jay M. Marshall

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#11

In re application of:

FISCHER

Application No.: 09/840,743

Filed: April 23, 2001

For: NUCLEIC ACIDS THAT
CONTROL PLANT DEVELOPMENT

Examiner: Anne Kubelik

Art Unit: 1638

RESPONSE TO RESTRICTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed August 7, 2002, Applicants hereby elect with traverse the claims of Group I (claims 1-8, 13, 15-21 and 24-26).

According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, the MPEP at 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. Applicants respectfully submit that examination of the claims in Groups I-V would not create an undue burden and respectfully request withdrawal of the restriction requirement in this case.

In particular, Applicants request that Applicant reconsider the restriction of Groups II and III from Group I. Group I includes claims directed to DMT encoding polynucleotides. Group II is directed to polynucleotides encoding DMT that are operably linked to a DMT promoter. It is not clear why the addition of the DMT promoter justifies a new restriction group.

Similarly, Group II includes claims directed to antisense constructs of DMT polynucleotides. In light of the fact that introduction of either sense or antisense constructs can result in a reduction of DMT polypeptide expression in plants, it is unclear why antisense constructs and uses thereof justify a different restriction group. Furthermore, Applicants note that the Examiner considered antisense constructs together with sense constructs during the examination of the parent application. Therefore, Applicants respectfully request consolidation of Groups I-III.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-273-7554.

Respectfully submitted,


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